

§ 52.39 Finality of early site permit determinations.

(a)(1) Notwithstanding any provision in 10 CFR 50.109, while an early site permit is in effect under §§ 52.27 or 52.33 the Commission may not impose new requirements, including new emergency planning requirements, on the early site permit or the site for which it was issued, unless the Commission determines that a modification is necessary either to bring the permit or the site into compliance with the Commission's regulations and orders applicable and in effect at the time the permit was issued, or to assure adequate protection of the public health and safety or the common defense and security.

(2) In making the findings required for issuance of a construction permit, operating license, or combined license, or the findings required by § 52.103 of this part, if the application for the construction permit, operating license, or combined license references an early site permit, the Commission shall treat as resolved those matters resolved in the proceeding on the application for issuance or renewal of the early site permit, unless a contention is admitted that a reactor does not fit within one or more of the site parameters included in the site permit, or a petition is filed which alleges either that the site is not in compliance with the terms of the early site permit, or that the terms and conditions of the early site permit should be modified.

(i) A contention that a reactor does not fit within one or more of the site parameters included in the site permit may be litigated in the same manner as other issues material to the proceeding.

(ii) A petition which alleges that the site is not in compliance with the terms of the early site permit must include, or clearly reference, official NRC documents, documents prepared by or for the permit holder, or evidence admissible in a proceeding under subpart G of part 2, which show, *prima facie*, that the acceptance criteria have not been met. The permit holder and NRC staff may file answers to the petition within the time specified in 10 CFR 2.730 for answers to motions by parties and staff. If the Commission, in its judgment, decides, on the basis of the

petitions and any answers thereto, that the petition meets the requirements of this paragraph, that the issues are not exempt from adjudication under 5 U.S.C. 554(a)(3), that genuine issues of material fact are raised, and that settlement or other informal resolution of the issues is not possible, then the genuine issues of material fact raised by the petition must be resolved in accordance with the provisions in 554, 556, and 557 which are applicable to determining application for initial licenses.

(iii) A petition which alleges that the terms and conditions of the early site permit should be modified will be processed in accord with 10 CFR 2.206. Before construction commences, the Commission shall consider the petition and determine whether any immediate action is required. If the petition is granted, then an appropriate order will be issued. Construction under the construction permit or combined license will not be affected by the granting of the petition unless the order is made immediately effective.

(iv) Prior to construction, the Commission shall find that the terms of the early site permit have been met.

(b) An applicant for a construction permit, operating license, or combined license who has filed an application referencing an early site permit issued under this subpart may include in the application a request for a variance from one or more elements of the permit. In determining whether to grant the variance, the Commission shall apply the same technically relevant criteria as were applicable to the application for the original or renewed site permit. Issuance of the variance must be subject to litigation during the construction permit, operating license, or combined license proceeding in the same manner as other issues material to those proceedings.

Subpart B—Standard Design Certifications

§ 52.41 Scope of subpart.

This subpart set out the requirements and procedures applicable to Commission issuance of rules granting standard design certification for nuclear power facilities separate from the

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filing of an application for a construction permit or combined license for such facility.

§ 52.43 Relationship to appendices M, N, and O of this part.

(a) Appendix M to this part governs the issuance of licenses to manufacture nuclear power reactors to be installed and operated at sites not identified in the manufacturing license application. Appendix N governs licenses to construct and operate nuclear power reactors of duplicate design at multiple sites. These appendices may be used independently of the provisions in this subpart unless the applicant also wishes to use a certified standard design approved under this subpart.

(b) Appendix O governs the staff review and approval of preliminary and final standard designs. A staff approval under appendix O in no way affects the authority of the Commission or the presiding officer in any proceeding under subpart G of 10 CFR part 2. Subpart B of part 52 governs Commission approval, or certification, of standard designs by rulemaking.

(c) A final design approval under appendix O is a prerequisite for certification of a standard design under this subpart. An application for a final design approval must state whether the applicant intends to seek certification of the design. If the applicant does so intend, the application for the final design approval must, in addition to containing the information required by appendix O, comply with the applicable requirements of part 52, subpart B, particularly §§ 52.45 and 52.47.

§ 52.45 Filing of applications.

(a)(1) Any person may seek a standard design certification for an essentially complete nuclear power plant design which is an evolutionary change from light water reactor designs of plants which have been licensed and in commercial operation before the effective date of this rule.

(2) Any person may also seek a standard design certification for a nuclear power plant design which differs significantly from the light water reactor designs described in paragraph (a)(1) of this section or utilizes simplified, inherent, passive, or other innovative

means to accomplish its safety functions.

(b) An application for certification may be filed notwithstanding the fact that an application for a construction permit or combined license for such a facility has not been filed.

(c)(1) Because a final design approval under appendix O of this part is a prerequisite for certification of a standard design, a person who seeks such a certification and does not hold, or has not applied for, a final design approval, shall file with the Director of Nuclear Reactor Regulation an application for a final design approval and certification.

(2) Any person who seeks certification but already holds, or has applied for, a final design approval, also shall file with the Director of Nuclear Reactor Regulation an application for certification, because the NRC staff may require that the information before the staff in connection with the review for the final design approval be supplemented for the review for certification.

(d) The applicant must comply with the filing requirements of 10 CFR 50.30(a) (1)–(4), and (6) and 50.30(b) as they would apply to an application for a nuclear power plant construction permit. The following portions of § 50.4, which is referenced by § 50.30(a)(1), are applicable to the extent technically relevant: paragraphs (a); (b), except for paragraphs (6); (c); and (e).

§ 52.47 Contents of applications.

(a) The requirements of this paragraph apply to all applications for design certification. (1) An application for design certification must contain:

(i) The technical information which is required of applicants for construction permits and operating licenses by 10 CFR part 20, part 50 and its appendices, and parts 73 and 100, and which is technically relevant to the design and not site-specific;

(ii) Demonstration of compliance with any technically relevant portions of the Three Mile Island requirements set forth in 10 CFR 50.34(f);

(iii) The site parameters postulated for the design, and an analysis and evaluation of the design in terms of such parameters;